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Hon. Mae A. D'Agostino, U.S. District Judge
James T. Foley U.S. Courthouse
445 Broadway
Albany, NY 12207

January 8, 2025

re: United States v. Thomas Berrington
Case No.: 1:24-CR-369 (MAD)

Dear Judge D'Agostino,

Please accept this mitigation memo on behalf of Mr. Thomas Berrington. I am the mitigation specialist assigned to this case. I am an independently licensed clinical social worker and have a doctorate degree in the social work. To inform this memo I interviewed Mr. Berrington on several occasion and relied on information gathered from several interviews my office conducted with his wife, Mrs. Sarah Berrington. I additionally reviewed medical and school records and resourced social and health sciences research about the cyclical nature of childhood maltreatment and sexual abuse to inform this memo. All records and research can be made available to court upon request.

Due to the incredibly lengthy guideline sentence range for this case, this memo aims to elevate relevant elements of Mr. Berrington's life history, documented mental illness, and what is known about the psychological impact of childhood abuse and maltreatment to aid the Court in determining a just and fair sentence for Mr. Berrington.

Presentation

I first interviewed Mr. Berrington in July of 2024. He presented as depressed and anxious. He had difficulty discussing the charges that brought him into custody and ruminated about his love for his family and his history of support and caretaking, "I just sit here and think about how much everybody has to suffer." When pressed, he could not reconcile his actions with his declarations of care for his family. "I was so set on not exposing my kids to the childhood that I had," he reported, "but it's like I just turned that into a self-fulfilling prophecy." As described in her eloquent letter to the court, his wife has similarly struggled to reconcile the husband she

knows as a caretaker, family man, and charitable giver with the gross violation he perpetrated on their family. This struggle belies the reality of so many incest cases, abusers are not solely abusers, their humanity and identity are complicated and can include both authentic goodness and deep depravity.

Throughout our interviews over the five months I met with him, Mr. Berrington consistently struggled to come to terms with his violation, he read many books about generational abuse and looked to religion to find meaning and solace. This inability to engage in deep reflection about his crime is likely due the cognitive distortions he has developed to manage his shame and maintain self-esteem; these distortions are common among cycle offenders and do not indicate an innate empathy deficit, instead they point to disordered coping.[1] He will benefit from the intensive treatment for sex offenders offered by the BOP.

Cycles of Abuse

Mr. Berrington grew up with his mother and adoptive father, Bob Berrington, in the Capital Region. His mother left his adoptive father and remarried when Mr. Berrington was 10 years old. Reportedly, Mr. Berrington Sr., a mechanic, was intimidating with high expectations for his family, "nobody could stand up to him." Mr. Berrington reports memories of accompanying his father to a local garage where a group of men would frequently gather to work on specialty cars as a young child. He felt special to be included in the fraternal atmosphere and, reportedly, looked up to his father as much as he feared him. He reports that he was groomed by a few men at the garage. First, they showed him pornographic pictures, increasingly explicit in their depictions of sexual acts. Then one man asked if he thought young Mr. Berrington could do those same things. When he eventually did perform oral sex on one man, a few others also took part. Over the course of two years, Mr. Berrington was sexually abused several times, including anal penetration.

Mr. Berrington's self-report of his own childhood sexual abuse is not explicitly documented in his medical or social service records. It is, on the other hand, supported by his documented lengthy childhood and adolescent history of encopresis, an inability to control his bowels, and sexualized childhood behaviors. Encopresis is a stress-induced dysregulated behavior in children.[2] Coupled with his own sexual acting out as a child, a strong indicator of sexual victimization, Mr. Berrington's accounts of being first groomed and then sexually victimized as a young child are consistent with his documented symptomology.

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[1] Marshall, W. L., Marshall, L. E., Serran, G. A., & O'Brien, M. D. (2009). Self-esteem, shame, cognitive distortions and empathy in sexual offenders: Their integration and treatment implications. *Psychology, Crime & Law*, 15(2–3), 217–234.https://doi.org/10.1080/10683160802190947

[2] Mellon MW, Whiteside SP, Friedrich WN. The relevance of fecal soiling as an indicator of child sexual abuse: a preliminary analysis. J Dev Behav Pediatr. 2006 Feb;27(1):25-32. doi: 10.1097/00004703-200602000-00004. PMID: 16511365.

The World Health Organization reported in November of 2024 that 1 in 7 male children is the victim of sexual abuse; children who are abused and who do not receive therapeutic intervention are more likely to abuse others as adults, passing the abuse from one generation to the next.[3] This pathway to offending has been extensively researched and while it does not provide an excuse for inexcusable behavior, it does provide context pertinent to informing a just response. The following known contributing factors to adult sex abuse against children are reflected in Mr. Berrington's life history:

- The sexually abused-sexual abuser association is even more specific to individuals who sexually offend against children.[4]
- Disordered and poor parental attachments are common among intrafamilial sex offenders.[5]
- Hypersexuality, characterized by increased interest in pornography, high numbers of sexual partners, compulsive masturbation, dissatisfaction with one's sex-life, wide range of sexual fantasies, is strongly associated with both childhood sexual abuse and bipolar disorder.[6]
- Intrafamilial offenders have significantly lower antisocial tendencies in general than extrafamilial sex offenders.[7]

Hypomania

As evidenced in Mr. Berrington's medical records, he was diagnosed with Bipolar disorder as a teen and later assessment pointed to instances of acute hypomania symptoms. For example, the following excerpts are directly from his records:

From the St. Ann's discharge summary where he was treated for sexually acting out at the age of 14 y.o.:

[3] World Health Organization: WHO. (2024, November 5). *Child maltreatment*. https://www.who.int/news-room/fact-sheets/detail/child-maltreatment

[4] Jespersen AF, Lalumière ML, Seto MC. Sexual abuse history among adult sex offenders and non-sex offenders: a meta-analysis. Child Abuse Negl. 2009 Mar;33(3):179-92. doi: 10.1016/j.chiabu.2008.07.004. Epub 2009 Mar 26. PMID: 19327831

[5] Craissati, J. (2018). The Rehabilitation of Sexual Offenders: Complexity, Risk and Desistance (1st ed.). Routledge. https://doi.org/10.4324/9780203703342

[6] Perera, B., Reece, M., Monahan, P., Billingham, R., & Finn, P. (2009). Childhood characteristics and personal dispositions to sexually compulsive behavior among young adults. *Sexual Addiction &; Compulsivity,* 16(2), 131–145. https://doi.org/10.1080/1072016090290542

[7] Seto MC, Babchishin KM, Pullman LE, McPhail IV. The puzzle of intrafamilial child sexual abuse: a meta-analysis comparing intrafamilial and extrafamilial offenders with child victims. *Clin Psychol Rev.* 2015 Jul;39:42-57. doi: 10.1016/j.cpr.2015.04.001.

In the early stages of treatment, sessions focused on improving overall family communication, limit setting, and addressing the encopresis. Sessions were used to develop a trusting therapeutic relationship and address sensitive familial issues such as Tom's overall self esteem, management of his bipolar symptoms, and expression of feelings. In time, Tom made significant improvements as Mr. and Ms. Berrington actively participated and worked on having clear expectations of success for Tom.

From 7/22/2015 Saratoga Family Medicine note:

Assessment #4: 296.80 Bipolar Disorder NOS
Care Plan:
Comments : History of bipolar disorder diagnosed as teen. Has not been on any medications for a number of years. Appears to function reasonably well. Some reported symptoms suggestive of episodic hypomania. No depressive symptoms currently.

A symptom of hypomania is impulsive hypersexuality. Cleaveland Clinic psychiatrist Adele Viguera, MD, explained for an information forum on hypomania and sexuality:[8]

> *Hypersexuality is often a symptom that can wreak havoc in a person's personal life and lead to poor decisions with possible serious and negative consequences…You treat the disease, not the symptom. Treatments usually involve medications such as mood stabilizers or antipsychotics, as well as psychotherapy such as cognitive-behavioral therapy or interpersonal social rhythm therapy. You often see a lot of regret for the past behavior, because they put themselves in very bad situations. When they're well, they reflect on that, and there can be a lot of regret and remorse. It's just another clue that shows you that it was not their normal state.*

Notably, Mr. Berrington was a.) not being treated for his mood disorder at the time of this conduct and b.) involved in several other extramarital sexual relationships that were out of the norm at the time of his offense. Since his detention, Mr. Berrington has been re-assessed and his now treated with anxiolytic and selective serotonin reuptake inhibitor medications.

Treatment

As per Bureau of Prisons (BOP) policy, Mr. Berrington will be evaluated towards the beginning of his sentence to determine the appropriate level of sex offender treatment. The BOP offers two tiers of intensity for evidence-based sex offender treatment programming:[9]

- The Residential Sex Offender Treatment Program (SOTP-R) is a high-intensity program designed for high-risk sexual offenders. It is a unit-based program with a cognitive-

[8] Rodriguez, D. (2024, December 12). *Bipolar disorder: when sexuality is in overdrive*. EverydayHealth.com. https://www.everydayhealth.com/bipolar-disorder/bipolar-disorder-and-sex.aspx#:~:text=Hypersexuality%20with%20bipolar%20disorder%20isn,lot%20of%20regret%20and%20remorse

[99] U.S. Department of Justice, Federal Bureau of Prisons, & Samuels, C. E., Jr. (2013). *Program Statement: Sex Offender Programs*. https://www.bop.gov/policy/progstat/5324_010.pdf page 14

behavioral emphasis. The cohousing of SOTP-R participants permits the implementation of a modified therapeutic community. This model has been proven effective in reducing inmate recidivism. A modified therapeutic community in a prison setting stresses pro-social values and behaviors that are needed in the outside community.

- The Non-residential Sex Offender Treatment Program (SOTP-NR) is a moderate-intensity program designed for low- to moderate-risk sexual offenders. It shares the SOTP-R's treatment philosophy and program materials, but lacks the frequency of treatment groups and the program duration of the SOTP-R. In addition, because SOTP-NR participants reside in the general population, there is no modified .therapeutic community.

Both programs involve continuous evaluation of risk and personalized treatment plans. They both require that the participant have a about two years remaining on their sentence to qualify. Mr. Berrington's sentence will allow for his full participation in either program. The Department of Justice's Office of Justice Programs' Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking produced a comprehensive analysis of treatment programs in 2015 and concluded that targeted sex offender treatment is effective in reducing both sexual and nonsexual recidivism.[10]

Likewise, Mr. Berrington's daughter is engaged in therapy to treat the impact of the abuse on her life and functioning. Treatment for children who have suffered sexual abuse involves:[11]

- Providing a safe release of feelings
- Overcoming negative and potentially self-destructive behavior
- Helping the child understand what part of her thinking has been affected by the abuse and helping him correct those distortions
- Helping the child overcome self-blame and self-hatred
- Helping the child build a sense of trust in herself and in a positive future
- Enabling the child to gain a sense of perspective about the abuse and to gain the emotional distance necessary to keep the trauma from hurting her in the future
- Supporting the child as she comes to terms with his own sexuality, including good feelings surrounding sexual behaviors and the ability to discriminate healthy sexuality from abuse

Mrs. Berrington's commitment to her daughter's well-being and continued treatment is essential to mitigating the impact of the abuse and breaking the toxic cycle of abuse.

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[10] U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, deBaca, L., & Przybylski, R. (2015). The effectiveness of treatment for adult sexual offenders. In *SOMAPI RESEARCH BRIEF*. https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/theeffectivenessoftreatmentforadultsexualoffenders.pdf

[11] Osmond, M., Durham, D., Leggett, A., & Keating, J. (1998). *Treating the aftermath of sexual abuse: A handbook for working with children in care*. Washington, D. C.: Child Welfare League of America.

Long prison sentences and the deterrent impact

In 2022, the Sentencing Commission published a report on a study that examined the relationship between length of incarceration and recidivism. The retrospective study concluded that sentences of 120 months and more have a strong statistically significant impact on recidivism, reducing the likelihood of re-offense by 29% or more, suggesting that sentences over 120 months have a preventative effect on future offending. Mr. Barrington, with a minimum sentence length of 180 months, will certainly appreciate the full impact of the deterrent influence of prison.

Summary and Recommendation

Nobody is born with a predilection for intrafamilial sex abuse. As with all psychopathologies, a deeper understanding of the etymology Mr. Berrington's behavior requires an examination of the biological, psychological, and social predisposing, precipitating, and perpetuating factors that came together to make him vulnerable to perpetrating this type of abuse on loved family member. Mr. Berrington's life history and personal characteristics, including his brain chemistry and early experiences of trauma, compounded in a perfect storm to devastating effects.

Understanding his pathway to offending does not excuse Mr. Berrington's conduct but does offer a lens with which to judge his guilt and apply an appropriate punishment. Considering the safety and treatment needs of his children; and the evidence that statistically Mr. Berrington is significantly less likely to reoffend due to his lengthy sentence; and Mr. Berrington's history of trauma and mental illness; and his good acts in the community, defense counsel's requested sentence of 292 months is sufficient to address Mr. Berrington's needs, protect the victims in this case, punish him for his conduct, and mitigate the likelihood of future offending.

Respectfully submitted,

Elizabeth Walker, DSW, LICSW